

**BOROUGH OF DUMONT
BERGEN COUNTY, N.J.
ETHICS BOARD
JANUARY 19, 2012 MINUTES**

Flag Salute

SUNSHINE LAW: The notice requirements of the Open Public Meetings Act of the State of New Jersey have been satisfied by the inclusion of the date, time, and place of this regular meeting in the annual schedule and notice of regular meetings of the Ethics Board. Such annual schedule and notice of regular meetings is posted at Borough Hall, was sent to **The Record** and the **Ridgewood News**, posted on the Borough website and filed with the Borough of Dumont on November 21, 2011.

ROLL CALL: Adriann Green, John McKenna, Ted Pomeroy, Thomas Reagan: present.

Also in attendance at the meeting were Anne Marie Rizzuto, Ethics Board Attorney, and Kathy Schaefer, Board Secretary.

Motion to open the meeting to the public: Mr. Reagan

Second: Mr. Pomeroy

All in favor: Aye

Mr. Richard McLaughlin, 358 Prospect Avenue, Dumont, NJ, stated that he was filing a complaint form with the Ethics Board. Ms. Rizzuto asked if he wanted to speak about the complaint. Mr. McLaughlin stated he hadn't planned on it but he could speak a few words. Ms. Rizzuto advised that she is the Board Attorney, that she had reviewed our complaint process. The Board Secretary will accept your complaint this evening but there is a ten day period for looking at the complaint and then scheduling an initial meeting to discuss your complaint within ten days. We do not have a scheduled meeting within ten days so we can discuss scheduling a meeting for you. She stated that period can be extended if we have Mr. McLaughlin's consent to extend it. She is not asking him that for now but gave him her business card and then they could discuss what date we are going to do it. We should discuss that with the Board members as well.

Ms. Rizzuto advised that she hasn't seen the complaint but she did review our process. First of all when there is a complaint filed the overriding thing that the ordinance and the Code of Ethics shows is that it shall be confidential. At least initially as we are doing an investigation, gathering information, or whatever else, those things are confidential. But the first thing that we have to do is look on the face of the complaint and make sure that it falls within the jurisdiction of our Board and the matters that we can consider are laid out in our borough ordinance and are further defined in the Code of Ethics that was adopted by resolution of this Board. She asked that the Board Secretary make sure that both Chapter 31 of our code as well as the resolution #07-01 and in addition, resolution #08-02 which amends that, be submitted to our current Board members and to Mr. McLaughlin as well if he needs a copy of those documents. Mr. McLaughlin stated that he did not have them and if they were on line. The Board Secretary stated that she could

either email them to Mr. McLaughlin or mail them to him. Ms. Rizzuto stated that Resolution #07-01 is on the website, but Resolution #08-02 which amends #07-01 is not. Chapter 31 is part of the code and it is on line but hard to print, so it might be easier to get a copy from the Board Secretary.

Ms. Rizzuto stated that the concern she has because we have currently two vacancies on this Board and we do not have an appointed council liaison is to go forward with considering the complaint without our full Board membership because parts of the governing documents talk about a two-thirds vote and when you consider it is not two-thirds of the appointed members, it is two-thirds of the full authorized membership under the code. She stated that would mean that the four people are two-thirds of six but obviously we would always need to have unanimity among us to ever pass or do anything under our resolution and our code. It really would behoove us to have our liaison appointed even though that person is not a voting member and our two vacancies filled. She doesn't know what the complaint is about but the documents we are governed by do call for that and it occurred to her that it sort of puts pressure on the Board that we would always have to be in unanimity or in other words a majority cannot overrule when there is no unanimity in there. So that's an issue for her which may fall into play with asking for an extension of time before the Board does their initial consideration and it certainly wouldn't be long. Mr. Reagan asked if that needed to be amended; he has been on the Board since the beginning and it seems that we do have a flux of people, someone resigning, another person resigning, so how often do we have a full six. He stated that if we do have a complaint and this is a good example although he does not know the nature of the complaint, but if the Council drags their feet – Ms. Rizzuto stated that most Boards have an odd number of people when they make up their majority, it is either five or seven or nine. In our case we are six. She stated that she wasn't here when it was initially drafted, she does know that they do have a requirement of two citizens, and two democrats and two republicans and she does know that it was reviewed by the State Local Finance Board and was approved as is, but it may be that it would behoove us to look at whether we want a seventh member. This way, we would know we are odd and four people would still be a majority. She stated in the meantime, let's go forward.

Ms. Rizzuto suggested to the Chairman that the Board Secretary make inquiries as to the likelihood of appointment of the two vacated Board members at its earliest convenience. Ms. Rizzuto suggested that to make it formal that she write a memo to the governing body saying that the Board is in receipt of a complaint, we feel that it is incumbent to appoint two members to the vacancies on the Board at its earliest convenience of the Council so that we can undertake the business of the Board to consider the complaint in the proper manner. All agreed with the suggestion.

Ms. Rizzuto stated that in the meantime we should accept the complaint for filing and what is the likelihood of anyone being able to attend a special meeting within the next ten days if in fact we need to do that? Turning to Mr. McLaughlin, she asked him if he understood the position the Board is in, does he have any thoughts on consenting to an extension of time. He stated if it was within reason. She stated that what she would like to suggest to him would be that he consent to – it is January 19th right now, we know that at least the next scheduled Council meeting is February 7th or the second scheduled meeting of February 21, to see if we get our appointments. She is asking Mr. McLaughlin to consider an extension time until March 1 and we will see if we

can get a meeting within the first week of March – did he think that was an undue amount of time. Mr. McLaughlin stated that with everything else going on, he thought that we probably would need the time. Ms. Rizzuto stated that she would think so, but again, she has not seen his complaint, we may even get other complaints that flow out of this as well. On the other hand, she does not think it is something that should be unduly delayed as Mr. McLaughlin had said. Ms. Rizzuto questioned the Board members regarding their calendars for the first week in March, this way we can at least get this scheduled and let the Council know that we are really looking for appointments before then. She suggested a meeting date of March 8th as a possible date - does that sound good for the four of you? Mr. McLaughlin stated so it says basically ten days and you are asking to extend it to March. Mr. McLaughlin stated that is a really good extension, is there any chance that something might happen earlier? Ms. Rizzuto stated if the Council were to appoint the two people right away, the Board Secretary could send an email asking the Board members if they were all available for a special meeting earlier in February. Mr. McLaughlin agreed that that was fair. Ms. Rizzuto stated let's make it for March 8th for now and the Board Secretary will publicize that, but perhaps it will be sooner.

Mr. McLaughlin stated that he had one other question: Ms. Rizzuto had mentioned that if any of the complaints are out of your jurisdiction, does the whole thing get thrown out? Ms. Rizzuto stated that we have to make an initial finding of jurisdiction, that it fits into what our powers are and I wouldn't say throw out so much as we decline to accept jurisdiction or that we do not have jurisdiction and therefore it goes no further as a complaint to the Ethics Board. However, there are also provisions within the governing document that talk about referrals to the County Prosecutor under certain circumstances so that also could be an action that this Board could take and, in addition, there could be parts of it that we feel we have jurisdiction and parts of it that we feel that we don't have jurisdiction. He stated, yes that is what I mean but you could handle the parts that you could. Ms. Rizzuto stated yes, just so you understand the Board has been around for a couple of years now; I've been the Attorney for the last two years, so we have not had a complaint filed before. We have had members of the public come before us to express interest in maybe amending ordinances or discussing various topics, but no complaint filed against a current public official or employee so far. Some of this is going to be decided as we go along but she can assure you and assure the Board that she does have experience in handling public entities of all types: municipalities, planning boards, zoning boards. This is her only Ethics Board, there are not a lot of ethics boards across the state; each county has an ethics board and there are resources that she can use to guide the Board in figuring out what are the parameters, the first being that we have to look at what our ordinance states and whether or not our ordinance allows us to continue on the matter that you have. We do have a lot of guidance and we have a lot of resources. There is an attorney that represents the State Local Finance Board and they are a resource for me to call on behalf of the Board. But it is new in that the Board will have to take the steps that they need to take carefully so certainly we can do it earlier than March 8th if we do get these appointments. The real question has to be if we don't get these appointments soon then she is going to have to make sure that we can properly handle this investigation with four members because the question occurs we have certain provisions that require two-thirds agreement and we are never going to get two-thirds agreement. Mr. McLaughlin asked if that was two thirds of four. Ms. Rizzuto stated that it is her opinion that it is two-thirds of six so that would be four and that would be the four that are currently appointed. She feels that it tends to put undue pressure on board members that have to be unanimous. If it is not unanimous, then

what does that mean? Those are things that I would want to research and consult upon and again, I do it without looking at your complaint. This is what I would say for any complaint filed here. We have these two vacancies that we need to have filled. It would be the most smartest, conservative thing to do that we have a full membership.

Ms. Rizzuto stated that we will go with March 8th for now or earlier if we get appointments. Ms. Green stated that she felt bad that we have to do this to this gentleman. Ms. Rizzuto stated that it may be in her research and consultation that they tell her to go forward with her four members.

Mr. McLaughlin stated he had found out about this meeting at the last minute and just hand wrote something, is that okay. Ms. Rizzuto stated that was fine, if you feel that you want to take more time and bring it into the Board Secretary tomorrow, that's fine too. If you want to add to it or make submission or documentary evidence, or council meetings, or whatever that the Board should be considering, you can supplement the information. There is no reason that he cannot add to it, but once we make a determination of jurisdiction and notify the affected public employee, then we are more into a legal proceeding. If you file something then he or she has to be given notice. The Board Secretary will be in touch with Ms. Rizzuto on what we need to do as far as what I would call due process right now, which would be notice, receiving each other's documents. The Board has the power to issue subpoenas; subpoenas cover both documents and persons so if we wanted to call witnesses or do anything of that nature, we have that power under our ordinance. Ms. Rizzuto stated that she would rather Mr. McLaughlin take his time and do as complete a submission as he can initially. Remember we have to make the jurisdiction determination on the face of your complaint. Your complaint has to establish jurisdiction. If you are worried about that, take your time and don't file it until you are ready to file it. Mr. McLaughlin asked what should be included in the complaint. Ms. Rizzuto stated that the ordinance is fairly broad, but it is also limited. It talks about financial disclosure violations which are a filing document and it talks about enforcing the municipal code of ethics. Financial disclosure requirements are a state statute and the municipal code of ethics are these resolutions that she was speaking about. Then, from there, in the code of ethics, it talks about conflicts of interest, using your official position to gain individual privileges, acceptance of gifts – these are the kinds of things that we can look at. The other thing that she should point out to him is that not everything has to be a complaint. If the Board decided that they wanted to issue an advisory opinion, even though we may not have jurisdiction on your complaint, we can also look at issuing an advisory opinion. So in filing your complaint, you should carefully read our governing documents. Mr. McLaughlin thanked the Board for its time.

Ms. Rizzuto reminded the Board of points she has made before. She prefers that the Board not respond by email to individual inquiry so if your inquiry is going to be a formal complaint, give it through the Board Secretary in writing and then it will be distributed appropriately. With respect to any matters that may be going on which you may have read in the newspapers or even when we received this complaint, I would ask the Board not to comment at public meetings, not to talk to newspaper reporters and basically to keep your counsel because you are going to be moving as a body on whatever the contents of the complaint are.

Mr. McLaughlin left the meeting.

There being no other members of the public present, motion was made to close the meeting to the public: Mr. Reagan
Second: Mr. McKenna
All in favor: Aye

Copies of the minutes of the November 17, 2011 meeting were sent to all Board members prior to the meeting.

Motion to approve the Minutes of November 17, 2011: Mr. Reagan
Second: Ms. Green
All in favor: Aye

Copies of the Request for Qualifications for Ethics Board Attorney for 2012 received from Ms. Rizzuto were sent to all Board members prior to the meeting. Mr. Reagan asked if all the members had a chance to look at Ms. Rizzuto's RFQ and were there any questions. There were no questions from the Board members. Ms. Rizzuto advised that she had proposed to continue at the same rate and under the same conditions as she previously worked for the Borough and this Board. In addition she had checked with the Board Secretary and there were no other submissions so she respectfully submits her submission for Board Attorney for 2012 and it shall be her continued pleasure to work for Dumont.

The Board Secretary advised that at the December Mayor and Council meeting, it was asked that all Borough professionals submit their invoices in a timely fashion after a meeting, so that the amount is encumbered. These invoices will be paid after they go through the normal approval process.

Resolution 12-01 Authorizing an Executive Session of the Ethics Board was pulled from the agenda.

Copies of Resolution 12-02 Authorizing Agreement for Professional Services for Ethics Board Attorney were submitted to the Board members prior to the meeting.

Motion to approve Resolution 12-02, as amended: Mr. Reagan
Second: Mr. Pomeroy
All in favor: Aye

Other Business:

Ms. Green asked if we were expecting to get more complaints. Ms. Rizzuto stated no, we didn't know what to expect, but the Board Secretary did let her know to review and be prepared in case we had people here. Mr. Reagan stated that he was contacted by a few people. Ms. Rizzuto asked if he referred them to the Board Secretary. Mr. Reagan stated that basically what was said to him, was that he had to do something. He stated that there is an official way to go about this, if you go online you will see that there is a form that you have to fill out and send to the Board Secretary. There were three different people who actually approached him right after the Mayor and Council Reorganization meeting. He had spoken to the Board Secretary and recommended that we have extra copies of the Complaint Form in case people did show up and we could hand it out and explain how to complete as Ms. Rizzuto did earlier with Mr. McLaughlin did. Ms.

Rizzuto stated that the minutes from the two Council meetings which occurred during January were not approved and they have to be approved before becoming public records.

Discussion followed regarding whether or not members of the Ethics Board should be present at Mayor and Council meetings. It was pointed out that if members could not actually attend the meetings, there are videos on line of the meetings and there are also copies of approved minutes on the Borough's website.

Motion to adjourn: Mr. Pomeroy

Second: Mr. McKenna

All in favor: Aye

A special meeting of the Ethics Board is tentatively scheduled for March 8, 2012. The next regularly scheduled meeting is March 15, 2012.

Minutes respectfully submitted by

A handwritten signature in cursive script, reading "Kathy Schaefer", followed by a checkmark.

Kathy Schaefer

Ethics Board Secretary